

**A RESOLUTION AS AMENDED
BY THE PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE**

A RESOLUTION AUTHORIZING THE SETTLEMENT OF ALL CLAIMS AGAINST THE CITY OF ATLANTA IN THE CASE OF *LANDMARK ENVIRONMENTAL INDUSTRIES, INC. V. CITY OF ATLANTA*, SUPERIOR COURT OF FULTON COUNTY, CIVIL ACTION FILE NO. 2001-CV-32729, AUTHORIZING SAID PAYMENT IN THE AMOUNT OF ONE MILLION AND FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00) TO BE CHARGED TO AND PAID FROM FUND ACCOUNT AND CENTER AS AUTHORIZED: 2J01 (Water & Wastewater Revenues) 529017 (Property Liquidation) T31001 (Unallocated Fund-Wide Expenses); AUTHORIZING THE CHIEF FINANCIAL OFFICER TO DISTRIBUTE THE SETTLEMENT AMOUNT; AND FOR OTHER PURPOSES.

WHEREAS, Landmark Environmental Industries, Inc. ("Landmark") owned and operated a soil composting and soil amendment manufacturing business at 2100 Spinks Street, NW, in the City of Atlanta; and

WHEREAS, Landmark filed suit against the City of Atlanta in 2001 contending that the City had created or maintained a nuisance by allowing raw sewage to flood the property upon which its business operated and to cause an inverse condemnation of that business, and, after a trial held in the Superior Court of Fulton County in February 2003, the jury awarded damages of \$2.5 million to Landmark; and

WHEREAS, the City appealed to the Court of Appeals of Georgia from the judgment entered in favor of Landmark, and, on March 17, 2005, the Court of Appeals rendered its opinion affirming the jury's determination that the City was liable to Landmark for causing an inverse condemnation of its business, but reversing the judgment and ordering a new trial on the issue of the damages that should be awarded to Landmark; and

WHEREAS, Landmark claims that it is entitled to damages in excess of \$3.3 million, comprising approximately \$2.4 Million for the value of its lost business, \$800,000 in attorney's fees and expenses of litigation, and post-judgment interest on any new judgment running from the date of the February 2003 judgment; and

WHEREAS, Landmark, through its attorneys, has offered to settle for the reduced amount of \$1.5 million; and

WHEREAS, in the opinion of the City Attorney, the proposed settlement is in the best interest of the City; now therefore,

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY RESOLVES

Section 1: THAT the City Attorney is hereby authorized on behalf of the City of Atlanta to settle the case of *Landmark Environmental Industries, Inc. v. the City of Atlanta*, Civil Action File No. 2001-CV-32729, in the Superior Court of Fulton County, Georgia, for the sum of One Million, Five Hundred Thousand (\$1,500,000.00) Dollars, in full settlement of Landmark's claims against the City of Atlanta;

Section 2: THAT in furtherance of said settlement the Chief Financial Officer is authorized to issue the City's check in the sum of One Million, Five Hundred Thousand (\$1,500,000.00) Dollars, payable either to Landmark Environmental Industries, Inc. or jointly to Landmark Environmental Industries, Inc. and its attorneys, Drew Eckl & Farnham, LLP, and to charge such amount to Fund Account and Center 2J01 (Water & Wastewater Revenues) 529017 (Property Liquidation) T31001 (Unallocated Fund-Wide Expenses);

Section 3: THAT the City Attorney is authorized to enter into and execute on behalf of the City of Atlanta any and all documents, agreements and pleadings necessary to effectuate the settlement as authorized herein.

**A RESOLUTION BY THE
PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE**

06-R-1910

A RESOLUTION AUTHORIZING THE SETTLEMENT OF ALL CLAIMS AGAINST THE CITY OF ATLANTA IN THE CASE OF *LANDMARK ENVIRONMENTAL INDUSTRIES, INC. V. CITY OF ATLANTA*, SUPERIOR COURT OF FULTON COUNTY, CIVIL ACTION FILE NO. 2001-CV-32729, AUTHORIZING SAID PAYMENT TO BE CHARGED TO AND PAID FROM Fund Account and Center as authorized: 2J01 (Water & Wastewater Revenues) 529017 (Property Liquidation) T31001 (Unallocated Fund-Wide Expenses); AUTHORIZING THE CHIEF FINANCIAL OFFICER TO DISTRIBUTE THE SETTLEMENT AMOUNT; AND FOR OTHER PURPOSES.

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WHEREAS, the City appealed to the Court of Appeals of Georgia from the judgment entered in favor of Landmark, and, on March 17, 2005, the Court of Appeals rendered its opinion affirming the jury's determination that the City was liable to Landmark for causing an inverse condemnation of its business, but reversing the judgment and ordering a new trial on the issue of the damages that should be awarded to Landmark; and

WHEREAS, Landmark claims that it is entitled to damages in excess of \$3.3 million, comprising approximately \$2.4 for the value of its lost business, \$800,000 in attorney's fees and expenses of litigation, and post-judgment interest on any new judgment running from the date of the February 2003 judgment; and

WHEREAS, Landmark , through its attorneys, has offered to settle for the reduced amount of \$1.5 million; and

WHEREAS, in the opinion of the City Attorney, the proposed settlement is in the best interest of the City; now therefore,

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